

**Question Number One – 1 ½ Hours**

Dr. Mengel performed abortions at the Sunshine Family Planning Center. He was a staunch advocate of abortion rights and made occasional appearances on local and national news-talk programs. His actions and the Center itself were the subject of regular, peaceful pro-life demonstrations. Mengel performed an abortion on behalf of Annie, with her consent. The fetus was 37 weeks old. Late term abortions were legal in this particular State. Instead of an abortion, though, a live birth resulted. While the baby cried on a table, Dr. Mengel discussed with Annie what should be done. He suggested he could break the baby's neck. He said this was his normal course when a live birth accidentally occurred. While this discussion was going on, one of the nurses, in horror, ran outside and yelled, "there's a baby in here and they're going to kill him!" Shirley, a protestor, and Abed, a casual passer-by, ran inside and found the baby on the table. Abed grabbed the baby and started to leave. Mengel, holding a scalpel, said, "give it back; I have to complete the procedure." Abed refused. When Mengel stepped toward Abed with the scalpel, Shirley struck him with a heavy metal object that had been sitting on a counter. When police and emergency responders arrived on scene, a protestor named Chang yelled "Mengel is a murderer!" As Mengel was taken away on a gurney, Chang yelled, "there's the murderer, let's finish the procedure on him!"

Chang was charged with disturbing the peace.

Mengel filed a lawsuit against Chang alleging that Chang had defamed him by calling him a murderer.

Mengel was charged with attempted murder of the child.

The City refused to reissue a permit to Shirley's pro-life group to protest outside the clinic. The City said it wished to avoid any further "trouble."

**Discuss the following:**

1. Whether Chang should be punished in connection with his yelling the words: "there's the murderer, let's finish the procedure on him!"
2. The merits of Chang's First Amendment-based defense against Mengel's defamation lawsuit.
3. The merits of Mengel's Due Process Clause/Privacy-based defense against prosecution for attempted murder.
4. Whether it was permissible for the City to refuse to *re-issue* a protest permit to Shirley's group.

**Question Number Two – 1 ½ Hours**

After the attempted abortion, Annie had a change of heart. She reconnected with her Jewish faith and accepted the conservative rabbinical teaching that abortions were violations of God's law. Annie started a group called *All God's Children*. The group was dedicated to promoting child birth as an alternative to abortion. Annie conceived of the idea of "monument to life" to be placed in a public place for the purpose of discouraging abortion. One day, Mayor Pelton of the town of Greendale contacted her and informed her that the town would like to provide space in the town square for the monument. Mayor Pelton pointed out to Annie that the town's official charter actually said: "we the people of Greendale, grateful to Almighty God for our lives and liberties, do unequivocally commit ourselves to the promotion of life and liberty."

Annie and her group began raising money for construction of the monument. Eventually, enough money was raised to begin construction. The monument took the form of two giant hands cradling a newborn baby. In oversized words on the monument were Hebrew characters, which, when translated into English, read: "you created my inmost being: you knit me together in my mother's womb." The words were from Psalm 139, though the source was not indicated on the monument itself, and they could not be understood unless the person viewing them was fluent in Hebrew.

Pierce was a Greendale resident. He learned about the meaning of the Hebrew passage and its Biblical source. He brought a lawsuit seeking removal of the monument from public property. Incidentally, he had not paid State or Federal taxes in 5 years.

Annie and her group also advocated for changes in State law. They successfully lobbied for enactment of the *Childbirth Support Act*, which provided financial assistance to unmarried pregnant women between the ages of 15 and 25. The purpose of the Act was to discourage abortion among those classes of persons who were more likely to have one.

Britta was a pregnant Caucasian woman. She applied for assistance under the *Childbirth Support Act*. She was informed she was not eligible because she was 27 years old and married. She was also informed that there were others "more in need of support" than her. Government records indicated that 85 percent of women receiving *Childbirth Support Act* money were African American.

**Discuss the following:**

1. Whether a violation of the Establishment Clause occurred with regard to the "monument to life."
2. Whether any violations of the Equal Protection Clause occurred with respect to the *Childbirth Support Act*.